



POLICE DEPARTMENT

April 8, 2013

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Keith Orvieto
Tax Registry No. 944865
40 Precinct
Disciplinary Case No. 2011-5767

The above-named member of the Department appeared before me on February 27, 2013, charged with the following:

1. Said Police Officer Keith Orvieto, while assigned to the 40th Precinct, on or about and between April 15, 2010, and September 12, 2011, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit said Police Officer on several occasions assisted in the prevention of the processing and adjudication of several summonses issued to several individuals.

P.G. 203-10, Page 1, Paragraph 5 PROHIBITED CONDUCT
GENERAL REGULATIONS

The Department was represented by Michelle Alleyne, Esq., Department Advocate's Office, and Respondent was represented by Craig Hayes, Esq.

Respondent, through his counsel, entered a plea of Guilty to the subject charges and testified in mitigation of the penalty. A stenographic transcript of the mitigation record has been prepared and is available for the Police Commissioner's review.

DECISION

Respondent, having pleaded Guilty, is found Guilty as charged.

SUMMARY OF EVIDENCE IN MITIGATION

Respondent, a five-and-a-half year member of the service, is currently assigned to the 40 Precinct, where he has worked for the past five years. Upon graduation from the Police Academy and prior to his current assignment Respondent had worked in the 52 Precinct for six months. Respondent testified that within a year to a year-and-a-half after working at the 40 Precinct he was assigned as the traffic officer. Respondent acknowledged that since the fall of 2010 and throughout this investigation he has still maintained his assignment as the traffic officer in the 40 Precinct.

Respondent stated his responsibilities as the traffic officer are as follows, "I have to do strict enforcement, write hazardous moving violations at specific locations, accident-prone locations, with the intent to, I guess, reduce accidents, but I pretty much have to go out and write a bunch of tickets at these locations, and they change." Respondent acknowledged that when the Department tells him how productive he is or not, summonses are the main criteria that they use based on what his responsibilities are and he stated, "Yes, some of my responsibilities, yes." Respondent also acknowledged that he is expected to produce summonses, or at least enforce the law as far as traffic goes, more than just looking for arrests and arrest situations.

Respondent testified that he has been the summons officer for approximately two-and a half years and he estimated that he has written and processed between 9,000 and 10,000 summonses. Respondent acknowledged that he has had to appear in court

approximately 400 days, court days, as the summons officer. Respondent testified that based on his experience, at least half of the people challenge the summonses as opposed to just pleading guilty. Respondent stated, "Every time I go to court, I average about 26 cases. About half of those people show up, and when they show up, I have to testify." Respondent estimated that he had to testify 4,000 times or more and his conviction rate for the summonses that he produces for the city is at "90 percent."

Respondent acknowledged that aside from these formal charges and specifications he has never been disciplined in any way for missing court. Respondent has also never been disciplined, either informally or formally, in any way for not being prepared to testify in court. Respondent testified that since he has received these charges and specifications his assignment changed "a little bit. It's gotten a little harder, a little more work" but he is still assigned as the summons officer. Respondent testified that he still has the same productivity as far as the summonses he produces and processes and he stated, "Maybe kicked it up a notch a little bit." Respondent further testified that he tries to bring in 15 summonses on the days that he does not have to go to court and on the days that he has court, he tries to do the best he can to make it up on the other days.

Respondent acknowledged that there have been times where he has pulled people over and they have either shown a PBA (Patrolmen's Benevolent Association) card or claimed a relationship or friendship or they were a relative of a police officer. Respondent stated, "It seems some days every third car I pull over, somebody has one of those cards. Respondent acknowledged that when he pulls someone over for any type of offense and depending on what he sees in the car, he can write a variety of different summonses for violations. Respondent further acknowledged that the Vehicle and

Traffic Law (VTL) offers you a lot of options to write summonses and he stated, "There is pretty much a rule for everything in that book."

Respondent testified that when he pulls someone over and they either have an excuse for doing something, have a PBA card or explain that they are friends with someone, "Usually in those situations, you know, I tell them why I'm stopping them, I scrutinize, you know. Everybody always has an excuse. Where did you get this from, who do you know. It doesn't make things right just because you have a card, that doesn't mean you can drive around with a cell phone glued to your ear, or speed, or do whatever." Respondent testified that he pretty much scrutinizes every situation and he tries to be fair with everybody, "It's not just with the cards." Respondent, based on his understanding and training, believed that "to an extent" he has the discretion as to what summonses he can write when he pulls someone over. Respondent testified that he has given some people warnings if they had a good enough excuse or circumstances and other times he does not "write them up." Respondent stated, "I try to be fair with everybody. I am not going to sit there and write somebody six million tickets just to get my numbers." Respondent acknowledged that for example, if he pulls someone over for speeding and he noticed something hanging from the rear view mirror, he may give the person a ticket for speeding and warn them about what is hanging from the mirror rather than give them another ticket.

Respondent acknowledged that he received "around two or three" phone calls from Police Officer Brian McGuckin asking for his assistance in the prevention of the adjudication of a summons. Respondent further acknowledged that he did in fact prevent the processing of at least two summonses after being requested to do so by McGuckin.

Respondent recalled exactly how he did it in each instance and he stated, "Yeah, I remember the first one, because it looks pretty bad for my case on the transcripts. Brian is when I got to the command, he was our delegate. He gave everybody his number in case we had an issue, so his number was in my phone. He never called me, until the first instance.....I said why is this guy calling me? It has to be because of a ticket, that was my assumption, because he never called me before, which is why the first words out of my mouth was what that was." Respondent testified that he did remember pulling over an individual who had a sergeant's PBA card and that nobody in the car was wearing seatbelts and the driver was on his cell phone. Respondent further testified that he could have written the individual eight tickets but only gave him one seat belt ticket.

Respondent said that McGuckin had called him and he did not want to fight with McGuckin. Respondent testified that Sergeant Edwards was the one who did the processing of the summonses at the time and McGuckin had advised him to put it in the sergeant's mailbox to have him take care of it. Respondent advised Edwards that he put the summons in his mailbox and Respondent explained the whole situation to him, to see what Edwards would do. Respondent stated, "If I could go back in time, or actually what I really wish I could have done back then would be like, you know, sorry, I could have written the guy six tickets, but I did not want any shit or stuff from....I didn't want any crap from Brian [McGuckin]." Respondent acknowledged that in talking with his fellow officers he was aware of instances or stories about other officers, when their lockers were moved into the shower or things were done with their stuff, if there was a complaint about them and the way they treated an officer or an officer's friend or family.

Upon questioning by the Court, Respondent testified that McGuckin was the PBA delegate in his precinct. Respondent further testified that what he perceived as difficulties, worst case scenario, was coming in and finding his locker moved. Respondent stated, "I am not saying that's something that he did, but there have been instances in my precinct where an individual got pulled over by state police and tried to make a complaint against the state police, and Brian screamed in front of roll call to him and everybody else....putting on a big scene, this is not what you do, this, that and the other thing." Respondent explained that at the time he had a year-and a half or maybe two years with the Department and McGuckin had 15 and he knew a lot of people. Respondent stated, "I am not going to go in there, as much as I wish I could have said it right now, I am not going to go in there and say, F you, Brian. It is what it is, I wrote this ticket, deal with it, suck it up. You know how many times I had an issue about something, and you know, I go ask him for help, and he says, suck it up, deal with it. It is what it is. For him to turn around and give me shit, I pretty much yes'd him to death with all the transcripts, which is why I am here right now, I want to get my explanation out on him." Respondent stated that he did not want any retaliation "or any crap" and people looking at him saying McGuckin said this about him, and getting shunned or getting his locker moved.

Respondent acknowledged preventing a second summons from being processed and he stated, "He [McGuckin] contacted me so many other times, and I didn't go forward with anything. I probably told him yes just to shut him up so I wouldn't be getting into a screaming argument or any of this on the phone." Respondent further acknowledged that with the new scanning procedures McGuckin had asked Respondent

to delay when he would turn in the summonses to circumvent the new procedure. Respondent denied that he ever held onto a summons before this system, for any purpose. Respondent testified that when McGuckin called him to tell him how to beat the system, Respondent told him, "Okay, no problem, Brian." Respondent further testified that he was not being honest with McGuckin when he told him okay, because it was not written anywhere that he had to be honest with a delegate or anybody on the phone, not even his job, unless he was in court. Respondent did not know if his supervisors would have noticed a delay in the turning in of summonses, but he stated, "You can notice it today. Every single summons that I've written with this whole scanning thing, I can put the summons number in and it will show the day that packet was issued to me and the day it was scanned back in."

Respondent acknowledged that he is still assigned as the summons officer and he has never been approached by anybody with any sort of allegations or questions regarding his summonses being late or not coming in. Respondent stated, "I took it upon myself to make sure everything was put in that day....we have this whole scanning thing now....and you have to do A summonses, B summonses, and C summonses." Respondent further stated that, "Since the implement of that scanner, they are only getting – B summonses were only at 90 percent. You know, at 90 percent, which was good. All the other ones were at 20 percent, 30 percent, which means that people weren't scanning them in. The reason it was like that because not only was I the predominant person writing B's [moving violation summonses] in my precinct, keeping the traffic statistics good, but I was the only guy scanning them in." Respondent acknowledged that the majority of the summonses that he writes are for moving violations and he stated,

“Pretty much the only person.” Respondent testified that he has never been approached by anyone saying that there was a problem with his B summonses being scanned or turned in late and he stated, “No, that was actually the only summons they didn’t have problems with.....They were all scanned in perfectly, clearly, on time. The only issues they had were with the parking and the C summonses.”

Respondent testified that he knew he was wrong and that he wished he could go back and do things differently. Respondent stated, “All the accounts and the assumptions that are put against me, I am not saying they are all a hundred percent correct, I am admitting to two or three occasions. I felt like I was between a rock and a hard place.” Respondent stated that he has never been disciplined and he has received very good evaluations. Respondent stated, “I have literally held my command up when everybody stopped writing and said don’t be writing anymore B’s, don’t do this, whatever, I had to keep up the work. I actually had to work harder just to keep my Commanding Officer and my Executive Officer up to par with the traffic conditions. I am organized with everything.” Respondent again acknowledged that he was wrong and he expected a punishment but he has one concern with the suspension in that he thinks “it’s a little too much.” Respondent testified that he is concerned it is really going to mess things up with his organization with traffic court because he is at traffic court on average three days a week, for approximately 26 cases and his conviction rate is high. Respondent further testified that if he misses one court date, even though the judges are allowed to postpone them, they throw his cases out and he stated, “It seems a little counter productive. I need time to pull them out, I need time to be organized. From what I have been hearing,

suspensions come down so quick, it's going to be, hey, tomorrow you're suspended, and everything will be out of order and disorganized."

Respondent testified that in Bronx traffic court, if an officer does not appear the first time and it is a new case, it is up to the judge and sometimes they will give you a postponement. If the officer does not show up again, it is automatically dismissed and if the motorist postponed it a couple of times, they will throw it out. Respondent testified that with him, since he is there so often with so many cases and his conviction rate, judges automatically just seem to throw everything out because they want Respondent to move on with everything and the dockets are just filled. Respondent stated:

I have to be even more organized in this day and age with the fact that Internal Affairs took over traffic court. If you lose a case, they are asking you why, where are your notes? It's bad enough I've got the lawyers saying you stated that in your testimony, why is it not written in the notes? You know, I go upstairs and it's the same thing. I have to put more detailed attention and time into making sure I know where my summonses are so I can pull them out, get the right ones, make sure the notes are on there so I can have a good chance of winning, then get everything refilled back for the people that postponed, or rescheduled, and no shows, and even have to hold on to the ones I adjudicated because in the past they come up for people who want an appeal, and guess what, the day I show up without having a summons or my notes, that's like an automatic. It used to be 10, now it's like 3 and 5. I don't know what it is, but I can't risk any of that.

Respondent agreed that since the ticket fixing scandal, the whole process of issuing a summons and appearing in court has been more scrutinized by the Department. When Respondent was asked if his productivity remained constant since this all happened, he stated, "Yeah, pretty constant."

On cross-examination, Respondent acknowledged that he was the traffic safety officer in the 40 Precinct. Respondent acknowledged that in this assignment he writes many summonses and in doing so he was very familiar with the process in 2010, as well as the current process, on what to do with those summonses so that they get processed after being written. Respondent agreed that on June 3, 2010, there was a summons box that he would drop the summons copies into, once he came back to the command. Respondent acknowledged that in instances where he warned and admonished motorists, summonses were never issued. Respondent testified that in instances where he would actually write the summonses and return to the command he would do one of two things.

Respondent explained that in 2010, he would either put the summons in the box up in the front of the command or he would give them to Edwards. Respondent testified that Edwards was the training sergeant and it was Edwards' duty to process all the summonses. Respondent testified that Edwards performed day tours and it was Edwards's duties, being the traffic/training sergeant, to take the summonses out of the box and separate and process them. Respondent acknowledged that if he had overtime or if he worked in excess of his normal tour he would deliver his summonses directly to Edwards. Respondent stated, "All the overtime slips and the breakdown sheet of the pedestrian safety of what I got would go to him. So sometimes I just hand them in, they would have to make copies of the ticket to justify the overtime. But mainly, I just put them in the box." Respondent acknowledged that when McGuckin asked him to hold onto the summons and give it to Edwards, he complied. Respondent testified that he did not want "any shit" from McGuckin so he told him, "Yeah, no problem." Respondent then approached Edwards and told him the situation regarding the reason why he wrote

the summons and Respondent stated he asked Edwards, "You want me to put it in your box, you know, it is what it is."

Respondent acknowledged that he had a chance to review some of the wiretap conversations between himself and McGuckin. When asked if during his review, did at any point McGuckin threaten him with anything, if he did not adhere to what McGuckin was asking him to do and Respondent stated, "I don't recall if he actually said a threat, but I do remember one of the transcripts he was screaming at me and cursing at me, you don't write a sergeant's brother I think that was the first one, you don't write a fucking sergeant's brother, blah, blah, blah. You think I am going to sit there and say, F you, Brian, I am handing this in? I mean, the freaking guy was belligerent on the phone with me, so off (sic) course I am going to say yes." Respondent testified that he did not notify anyone in the Department regarding his concerns of retaliation if he did not do exactly what McGuckin had requested him to do and he stated, "No. Probably be worse."

Respondent was asked if on June 3, 2010, August 9, 2010, and August 10, 2010, [Department's Exhibit (DX) 1, compact disc recording of conversations from those dates; DX 1C, 1A, and 1B, transcripts of the conversations from the respective dates], in these three separate conversations where McGuckin asked him to take care of three separate tickets, if he complied with the requests. When asked directly about June 3, 2010, Respondent inquired as to the names of the people and stated, "I know there were two or three." Respondent acknowledged that the motorist involved was Person A and he stated, "I think so. I think I said, because I remember Person A was one of them, and the other one was the sergeant's brother" which was on August 9, 2010. August 10, 2010, was a driver named Person B and Respondent stated, "I do remember something about

Person B. I think he did contact me with it, but I also remember seeing this guy in court, too. I think I said, yeah, no problem, and I think I handed the summons in.” When Respondent was asked to recall if McGuckin had asked him if he had to go to traffic court he stated, “I am in traffic court all the time. Probably.” Respondent stated that he might have told McGuckin that he would be in court that day and would take care of it and he stated, “I am not arguing the fact that I have two or three.”

Upon questioning by the Court, it was determined that the summons issued to Person B was dismissed in traffic court. Respondent stated, “I don’t know which one that is, I do know there was one that was brought up during my GO-15 about a case I testified to in traffic court about the window tints, and they’re alleging that I took care of this summons, yet they had Person C, who is the most expensive lawyer down there, and I testified two minutes in this case, which I had a disagreement about. So I don’t know if this was this case or not.” Respondent acknowledged that in this last case he believed he testified, “For two minutes if it was with Person C and the lawyer and everybody else.” Respondent acknowledged that there are times that he testifies in traffic court and the judge finds the motorist not guilty. Respondent stated, “Yes, for whatever reason, that’s why I am 90 percent and not a hundred percent conviction rate.”

PENALTY

In order to determine an appropriate penalty, Respondent’s service record was examined. See *Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974). Respondent was appointed to the Department on July 9, 2007. Information from his personnel record

that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

In his testimony at this proceeding Respondent claimed that he was pressured by the then union representative McGuckin to cooperate with the “fixing” of these various summonses. As a result of Respondent’s testimony I requested that the audio recordings of the conversations between McGuckin and Respondent be placed in evidence and I listened to them. The three conversations occurred on June 3, 2010, August 9, 2010, and August 10, 2010. There is no indication in any of these conversations that Respondent was pressured to cooperate or that he resisted.

In the conversation of August 9, 2010, Respondent did express disdain for the driver, telling McGuckin that he was driving while talking on his cell phone and that he also was not wearing his seat belt and that a child in the front seat was not wearing his seat belt. Respondent noted that he had only given the driver a summons for the infraction involving the child.

Beyond that he did not resist or otherwise question what was asked of him with regard to this summons.

In the end I do not see anything that really mitigated Respondent’s cooperation in the practice of “fixing” summonses as requested.

Respondent has also argued that a penalty involving suspension would result in him being unable to attend traffic court and would likely result in the loss of some summonses. Certainly the suspension, if it is imposed, should be done in such a way that would not interfere with the adjudication of summonses but that argument misses the

point. The penalties imposed in these cases are designed to address the very serious nature of the offense.

Consequently, in keeping with other similar cases, it is recommended that Respondent be DISMISSED from the New York City Police Department, but that his dismissal be held in abeyance for a period of one year, pursuant to Section 14-115 (d) of the Administrative Code, during which time he remains on the force at the Police Commissioner's discretion and may be terminated at anytime without further proceedings. Further, this Court recommends that Respondent forfeit 25 vacation days and 5 suspension days.

APPROVED
APR 30 2014
Raymond W. Kelly
RAYMOND W. KELLY
POLICE COMMISSIONER

Respectfully submitted,

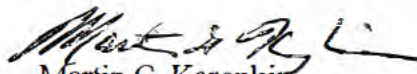
Martin G. Karopkin
Martin G. Karopkin
Deputy Commissioner ■ Trials

POLICE DEPARTMENT
CITY OF NEW YORK

From: Deputy Commissioner – Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER RH ORVIETO
TAX REGISTRY NO. 944865
DISCIPLINARY CASE NO. 2011-5767

Respondent received an overall rating of 4.0 “Highly Competent” on his last three annual [REDACTED]

For your consideration.


Martin G. Karopkin
Deputy Commissioner Trials